

that time taken in execution and sold under writs of *fiery facias*.

* Their liability is spoken of as the then established law.
319 It is not said in general terms, that as against those holding such equitable interests, their creditors were in all cases without remedy; but "that the creditors of such persons are often without remedy either at law or in equity."

After the passage of these laws, it was held, in June, 1800, by the Court of Appeals, that an equitable interest in real estate was liable, at the suit of a creditor, to attachment, condemnation and sale, for the satisfaction of a debt due by its owner. *Campbell v. Morris*, 3 H. & McH. 535; *Pratt v. Law*, 9 Cran. 456, 495; *Campbell v. Pratt*, 5 Wheat. 429. The Court is not reported to have given any reasons for their judgment; but the decision was considered at that time, as having established the general rule of law, that all equitable interests might be taken in execution under a *fiery facias* as well as by an attachment. In October of the same year the Chancellor declared, that he so understood it, and says, that "he cannot otherwise than remark, that the decision appears, from transactions in this Court, and in the land office, agreeable to the opinion of the late Chancellor ROGERS, as well as of the present Chancellor;" that is, during the time of the first Chancellor of the Republic. *Hopkins v. Stump*, 2 H. & J. 302. And in the year 1821, these general principles seem to have been again affirmed by the Court of Appeals. *Ford v. Philpot*, 5 H. & J. 312.

But whatever doubts may have been entertained, as to the existence of the general rule, they have been entirely removed by the Act which declares, that any equitable estate or interest which a defendant named in a writ of *fiery facias* may have in any lands, tenements or hereditaments, may be taken, seized and sold by virtue of such writ, and the purchaser shall have such title assigned to him, and in all respects stand in the place of the person whose title he has purchased. 1810, ch. 160. Whether this Act shall be considered as having merely affirmed a pre-existing general rule, or as having itself introduced and established a new regulation upon the subject, there yet will remain some difficulty to be removed.

It seems to be agreed even upon English principles, that a judgment is not a lien upon a mere empty legal estate, and that it cannot be extended under an *elegit*; *Powel Mortg.* 274, note; while on the other hand it must be admitted, that where the whole equitable interest is in the defendant, leaving nothing more than a mere empty legal title * in any one else, such equitable

320 interest must, according to this law, be held liable to a lien, and to be taken in execution on a judgment against such defendant. *Jackson v. Willard*, 4 John. Rep. 41. But between these extremes, where the lines shall be drawn, and how the relative interests of the parties shall be adjusted, may be, in some cases, the